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EXAMINER

SMITH, CAROLYN L

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/540,216	Applicant(s) CHOQUET, CLAUDE	
	Examiner Carolyn Smith	Art Unit 1631	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-50 and 52 is/are pending in the application.
- 4a) Of the above claim(s) 12 and 36 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-35, 37-50 and 52 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Applicant's amendments and remarks, filed 3/1/10, are acknowledged. Amended claims 1, 7, 9-10, 16-17, 21, 23, 31, 33-34, 40-41, 45, 47-48, 50, and 52 canceled claim 51 are acknowledged. Claims 12 and 36 remain withdrawn due to being drawn to non-elected species. It is noted that the status identifiers for claims 12 and 36 are incorrect; they should recite "withdrawn".

Applicant's arguments, filed 3/1/10, have been fully considered but they are not deemed to be persuasive. Rejections and/or objections not reiterated from the previous office actions are hereby withdrawn. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Claims herein under examination are 1-11, 13-35, 37-50, and 52.

Claim Objection

Claim 7 is objected to because of the following informality:

Claim 7 (line 7) recites an improper comma.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 49 and 52 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. This rejection is maintained and reiterated for reasons of record.

Claims 49 and 52 are drawn to a computer readable memory and memory, respectively. These claims are not directed to one of the four statutory categories (i.e. reads on a carrier wave). In addition, a carrier wave reads on non-statutory subject matter (In re Nuijten 84 USPQ2d 1495 (2007)). Also, see OG Notice (1351 OG 212).

Applicant argues that a computer-readable storage medium having executable computer program code is an article of manufacture and cites various case laws. It is noted that claims 49 and 52 currently recite computer readable memory, but not computer-readable storage medium. However, if Applicant amended these claims to recite that the memory was stored on a “computer-readable storage medium” or a “non-transitory computer readable medium”, then this rejection would be nullified.

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Claims Rejected Under 35 U.S.C. § 112, Second Paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 31 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention.

Claim 31 recites various commas, "and"s, and an "or" in the last paragraph which are confusing. It is unclear what limitations are intended to be grouped together and which are intended to be separate. Clarification of this issue via clearer claim wording is requested. This rejection is maintained.

Applicant argues the claim has been rewritten to clarify the issue. This statement is found unpersuasive as the last paragraph of the claim remains confusing. For example, if A represents "code of conduct, state-of-the-art, physics law equations, technical code and technique for physical activities requiring training and certification for a user", B represents "training scenarios in the information method database unit", and C represents "storing the test elements in the virtual database", it is unclear if Applicant intends A OR (B + C), (A or B) + C, or some other scenario. Separating the groups with A), B), and C) limitations and clearly stating which limitations are mandatory and which are not (i.e. A, B, AND C; A, B, OR C; etc.) will help clarify this ambiguity. In A, it is also unclear if technique involves just the "physical activities requiring training" or "physical activities requiring training AND certification for a user".

Claim Rejections – 35 USC §102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-11, 13-35, 37-50, and 52 are rejected under 35 U.S.C. 102(e) as being anticipated by French et al. (US 2003/0077556 A1). This rejection is maintained and reiterated for reasons of record.

French et al. disclose a virtual simulator system, method, apparatus, memory, and a computer for neuromuscular training and certification via a communication network (abstract, 0011, 0013, 0043, 0048, 0071, 0091, 0136, 0160, 0290, 0359-0360, 0368), as stated in the preamble of instant claim 1 and “computer executable instructions for determining certification based on the training scenarios” as stated in instant claim 52. French et al. disclose a database storing data and training scenarios complying with a code of conduct, state-of-the-art, physics law equations, technical code and physical activity techniques and connectable to a communication network (0070-0076, 0290, 0368, 0422, 0425), a multimedia device having a stopwatch circuit and input device connectable to a communication network (0026, 0038, 0040, 0041, 0048, 0176-0190, 0206, 0218, 0359, 0362), an online simulator processor connectable to a

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communication network (0048, 0160, 0290) capable of retrieving data in response to user selection (0076, 0079, 0087, 0152), generating test elements, parameters, and controls based on the data (0076, 0087, 0155, 0304, 0407, 0422), monitoring use of the input device (0009, 0093, 0097, 0117), performing calculations of a simulated environment in response to use of input device and management of test elements, parameters and controls (0077, 0081-0082, 0086, 0098-0099, 0104, 0107, 0112, 0123, 0152, 0153), generating real time images (0123, 0153, 0218, 0224), and recording test elements in the database (0036, 0070), as stated in instant claims 1, 23, and 48-52. French et al. disclose a multimedia device connectable to a virtual simulator system (0026, 0038, 0040, 0041, 0048, 0176-0190, 0206, 0218, 0359, 0362) having an online simulator processor and database via communication network (0048, 0160, 0290, 0070, 0290, 0368, 0422, 0425) comprising a stopwatch circuit and input device (0026, 0038, 0040, 0041, 0048, 0176-0190, 0206, 0218, 0359, 0362), a user interface (0048), a port (0048), and a processor connected to a stopwatch circuit, input device, user interface, and port (0026, 0038, 0040, 0041, 0048, 0176-0190, 0206, 0218, 0359, 0362) comprising units for transmitting data (0048), receiving test elements, parameters, and controls and simulated environment data (0076, 0087, 0155, 0304, 0407, 0422, 0077, 0081-0082, 0086, 0098-0099, 0104, 0107, 0112, 0123, 0152, 0153), monitoring a management of test elements, parameters, and controls, and displaying real time images (0077, 0081-0082, 0086, 0098-0099, 0104, 0107, 0112, 0123, 0152, 0153, 0218, 0224), as stated in instant claim 47. French et al. disclose producing warning signals depending on actions by user (0152, 0430), as stated in instant claims 2, 26. French et al. disclose recording and processing real time images (0062, 0069-0071), as stated in instant claims 3 and 27. French et al. disclose analyzing real times images (0062, 0069-0071), comparing test result data with

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model result data and producing consequent markings and recording markings in the database (0070, 0108, 0306, 0307, 0358, 0379, 0429, 0430), as stated in instant claims 4 and 28. French et al. disclose building and storing a learning curve in the database (abstract, claims 1-7, 0002, 0007, 0011-0013, 0070, 0107, 0344, 0400-0422), as stated in instant claims 5 and 29. French et al. disclose compiling real time images and test elements in a form of playbacks selectively playable (0062, 0069, 0304-0310), as stated in instant claims 6 and 30. French et al. disclose the database is formed of an information system database unit and a virtual database unit (0070, 0305, 0307, 0308-0310, 0368), as stated in instant claims 7 and 31. French et al. disclose the device comprising a user interface displaying real time images (0013, 0048, 0066, claim 3), as stated in instant claims 8 and 32. French et al. disclose a process data sheet showing an illustration of the object subjected to a test, instructions, and test elements and parameters (0071, 0083-0085, 0152) and providing test controls for setting up the simulated environment and configuring test parameters (0152), as stated in instant claims 9-10, 25, and 33-34. French et al. disclose illustration is from an animation movie in the database (0067-0071), as stated in instant claims 11 and 35. French et al. disclose processing real time images (0048, 0063-0073), as stated in instant claims 13 and 37. French et al. disclose test elements such as speed and spatial data (0052, 0067, 0075, 0076, 0407), as stated in instant claims 14 and 38. French et al. disclose physical law equations that are mechanical laws (0071, 0075), as stated in instant claims 15 and 39. French et al. disclose an input device comprising a motion capture input device (0048, 0002, 0010) and mouse cursor motion (0048), as stated in instant claims 16-17 and 40-41. French et al. disclose real time images show a progression of test elements from all angles (0062, 0069, 0261, 0424), as stated in instant claims 18 and 42. French et al. disclose test elements, parameters, and

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controls are configurable by user (0076, 0087, 0074, 0340), as stated in instant claims 19 and 43. French et al. disclose classifying the management of physical activities in the database (0007, 0013, 0070, 0046, 0084, 0091), as stated in instant claims 20 and 44. French et al. disclose managing training scenarios by inputting test parameters, checking until conformity with technical code to produce a valid training scenario, and updating a training scenario (0091, 0160, 0357-0360, 0363-384, 0389-0398, 0077, 0087, 0153, 0157), as stated in instant claims 21, 24, and 45. French et al. disclose selectively providing access to test elements stored in the database (0070, 0076, 0309, 0368-0370), as stated in instant claims 22 and 46.

Thus, French et al. anticipate the instant invention.

Applicant summarizes requirements for a claim to be anticipated. Applicant argues that instant claims 1, 23, 47, 48, 50, and 52 recite "neuromuscular training and certification" or "computer executable instructions for determining certification based on the training scenarios", summarizes French et al., and argues these limitations are not taught by French et al. This statement is found unpersuasive as the intended use as stated in the preamble of instant claims 1, 47, 48, 50, and 52 means the devices only need to be "capable" of such a use. It is further noted that instant claim 1, for example, recites data relative to a "code of conduct, state-of-the-art, physics law equations, technical code and technique for physical activities requiring training and certification for a user" OR "training scenarios complying with the code of conduct, state-of-the-art, physics law equations, technical code and technique". If the latter limitation is selected (i.e. training scenarios complying...), then the certification limitation is interpreted to not be a required limitation (i.e. it was in the other data group that wasn't selected). It is further noted

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that "data relative to" and "based on" are limitations with extremely broad claim language.

French et al. disclose a virtual simulator system, method, apparatus, memory, and a computer for neuromuscular training and certification via a communication network (abstract, 0011, 0043, 0048, 0071, 0091, 0136, 0160, 0290, 0359, 0368). French et al. disclose testing and training protocols to allow the assessment and quantification of movement and agility skills (0071) as well as information representing valid and unique criteria to progress the player in his training program with immediate, objective feedback during training for motivation and optimized training and validation (0091, 0136, 0160, 0359-0360) and computer software (0048) which represents "certification" and "computer executable instructions for determining certification based on the training scenarios" in a broad and reasonable interpretation (see attached sheets of Merriam-Webster online definitions of "certify" and "certification"). Applicant's arguments are deemed unpersuasive for the reasons given above.

Other prior art

Although not being used as prior art, the following reference is being made of record:

Hersh (US 20020106617 A1) describes a multi-media method and system to assess an individual in a virtual work environment using a database, multimedia device, and online simulator processor (abstract, 0073, 0096-0097).

Conclusion

No claim is allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993) (See 37 CFR §1.6(d)). The Central Fax Center number for official correspondence is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. If you have questions on access to the Private PAIR system, please contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you

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would like assistance from a USPTO Customer Service Representative or access to the automated information system, please call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Smith, whose telephone number is (571) 272-0721. The examiner can normally be reached Monday through Thursday from 8 A.M. to 6:30 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marjorie Moran, can be reached on (571) 272-0720.

April 29, 2010

/Carolyn Smith/
Primary Examiner
AU 1631